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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/715,525 | 11/19/2003 | Toshiki Maeda | 08009.0008 | 4709 |
| 22852 | 7590 | 11/02/2005 | EXAMINER | |
| FINNNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413 | | | RHEE, JANE J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1745 | |

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------------|-------------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/715,525 | MAEDA ET AL. | |
| | Examiner Jane Rhee | Art Unit 1745 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
 5) Claim(s) ____ is/are allowed.
 6) Claim(s) 1-3 is/are rejected.
 7) Claim(s) ____ is/are objected to.
 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 3/16/2004.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. ____ .
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____ .

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Sunagawa et al. (EP 0944125).

Sunagawa et al. discloses a lithium secondary battery using the active material for a positive electrode (page 2 lines 53-54) which is expressed by the general formula $\text{Li}_x(\text{Ni}_{1-y}\text{Co}_y)^{1-x} \text{M}_z\text{O}_2$ (where $0.98 \leq x \leq 1.10$, $0.05 \leq y \leq 0.4$, $0.01 \leq z \leq 0.2$, M at least one element selected from the group of Al, Zn, Ti and Mg) (page 2 lines 55-57), and the average particle size of the spherical secondary particles is 3.0 to 20.0um (page 2 line 54) which is in the range of applicant's claimed size of 5-15um. Sunagawa et al. discloses specific surface area of between 0.15 to 2.0m^2/g (page 3 lines 20-21).

Since Sunagawa et al. discloses the same active material desired by the applicant, it is inherent that according to the Rietveld analysis, the Li site occupancy rate for the Li site in the crystal is 98% or greater.

As to the active material being subjected to a washing process, the washing process is an intended use. It has been held that a recitation with respect to the manner in which the claimed particle is intended to be employed does not differentiate the

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claimed article form a prior art article satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jane Rhee
October 27, 2005



PATRICK JOSEPH RYAN
SUPERVISORY PATENT EXAMINER